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FILIGREEN FARM LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

FILIGREEN FARM LLC,

Plaintiff,

vs.

GREEN THREAD HOLDINGS INC.,

Defendant.

Case No.

COMPLAINT AND DEMAND FOR JURY TRIAL

The Hon.

Trial Date:

Plaintiff The Filigreen Farm LLC (“Filigreen”) complains and alleges as follows against Defendant Green Thread Holdings Inc. (“Green Thread”).

THE NATURE OF THE ACTION

1. This is an action arising under 15 U.S.C. § 1114 for federal trademark infringement and including state law claims over which the court has supplemental jurisdiction because they arise out of the same case or controversy. The state law claims include common law trademark infringement, unfair business practices under California Business and Professions Code § 17200, et seq., and common law unjust enrichment.

THE PARTIES

2. Filigreen Farm LLC is a California limited liability company with its principal place of business at 11750 Anderson Valley Way, Boonville, CA 95415.

1 3. On information and belief, Green Thread Holdings Inc. is a California public
2 benefit corporation with its principal place of business at 548 Market Street, Suite 67426 San
3 Francisco, California 94104.

4 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

5 4. This Court has subject matter jurisdiction under 15 U.S.C. § 1121 (action arising
6 under the Lanham Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1338(a) (any Act of
7 Congress relating to patents or trademarks); 28 U.S.C. § 1338(b) (action asserting claim of unfair
8 competition joined with a substantial and related claim under the trademark laws); and 28 U.S.C. §
9 1367 (supplemental jurisdiction).

10 5. This Court has personal jurisdiction over Green Thread because it has committed or
11 will commit acts of infringement in violation of 15 U.S.C. § 1114 and, on information and belief,
12 has or will offer infringing services in the stream of commerce, with the knowledge or
13 understanding that such services will be sold in the State of California, including in this District.
14 The acts by Green Thread will cause injury to Filigreen within this District. Upon information and
15 belief, Green Thread has sold or intends to sell its infringing services within this District, expects
16 its actions to have consequences within this District, and derives substantial revenue from
17 interstate commerce.

18 6. Venue is proper within this District under 28 U.S.C. §§ 1391(b) and (c) because
19 Green Thread transacts business within this district and has or intends to offer for sale in this
20 district products that infringe the Filigreen registered trademarks. In addition, venue is proper
21 because Filigreen's principal place of business is in this district and Filigreen will suffer harm in
22 this district. Moreover, a substantial part of the events giving rise to the claim occurred in this
23 district. Pursuant to Local Rule 3-2(c), Intellectual Property Actions are assigned on a district-
24 wide basis.

25 7. Assignment to the San Francisco Division is appropriate pursuant to Civil Local
26 Rule 3-2(c) because the acts and omissions giving rise to Filigreen's claims occurred in San
27 Francisco County, and the property that is the subject of the action is situated there.

FACTUAL BACKGROUND

8. Founded in 2000, Filigreen Farm is situated on 97 acres in the Anderson Valley, Mendocino County, California. It is a Demeter-certified Biodynamic and CCOF-certified organic diversified farm whose primary products are tree fruits, blueberries, olives, wine and table grapes, and houses a production garden (flowers and vegetables), livestock, apiary, and an ongoing inquiry into water revitalization. Filigreen is located on land once inhabited and managed by the Tabahtea (Tah-bah-tay) Pomo First Peoples named after Taa-Bo-Tah, or Long Valley.

Filigreen Biodynamic Farming and the FILIGREEN Trademark

9. Filigreen consistently produces top-quality, critically-heralded biodynamic produce.

10. When Filigreen began its farming and selling its now-established produce in 2000, there existed only a handful of other entities engaging in biodynamic farming. Biodynamic farming is a multi-faceted approach to land stewardship with the highest standards for ethical and sustainable practices, incorporating a holistic, ecological, and ethical approach to all aspects of agriculture.

11. While similar to “organic” farming in that both eschew the use of chemicals and GMOs in growing produce, biodynamic farming’s holistic and ecological practices additionally focus on adding vitality to the produce, the soil, and the land.

12. Agricultural products can be certified as “Organic” and/or “Biodynamic” by various certification organizations. Filigreen has chosen to adhere to the rigors of biodynamics and organics, and its practices and products are Demeter-certified Biodynamic and CCOF-certified organic.

13. In addition to offering its produce under the FILIGREEN trademark, Filigreen’s founders and employees regularly speak on biodynamics, farming, agriculture, and distribution nationwide. Filigreen has invested substantial amounts of time and money in promoting the Filigreen products and services in connection with its FILIGREEN trademark to hold itself and its products out as incorporating the highest quality and biodynamic practices.

14. And through its consistent quality products and services, the FILIGREEN

1 trademark has become well known to farmers, distributors, and customers throughout the state of
2 California and neighboring states as representing biodynamic products and services.

3 **Green Thread and Cannabis**

4 15. Green Thread offers third-party cannabis distribution services out of San Francisco,
5 California using the term FILIGREEN to identify the source of its services.

6 16. Cannabis is a significant crop produced by farmers around the country and,
7 specifically, in the area surrounding Filigreen. Because they are not lawful under federal law,
8 cannabis products are not eligible to be certified as organic. Such products can, however, be
9 certified as being biodynamic.

10 17. On information and belief, it is valuable to cannabis businesses that their goods and
11 services be seen as biodynamic.

12 18. Seeking biodynamic certification that would enable Green Thread to identify itself
13 or products it distributes as certified biodynamic is a rigorous undertaking. On information and
14 belief, Green Thread is not certified biodynamic and offers no biodynamic services or products.

15 19. As espoused in its marketing materials, however, Green Thread implies that it
16 offers services rooted in the tenets of biodynamic farming, describing itself on its website,
17 accessible at <https://www.filigreen.com/why-us>, as follows:

18 As a certified B-Corporation, it's part of our mission to promote environmental
19 sustainability and education. We're working to minimize our environmental impact and
20 ensure that every stage of our process is as green as possible. By aligning ourselves with
21 local organizations that share these values, we're developing strong partners in the
22 campaign for better awareness and proactive change

23 20. Green Thread has applied to register the FILIGREEN trademark with the United
24 States Patent & Trademark Office ("USPTO"), and currently has three pending applications for
25 the mark: USPTO Application Ser. Nos. 88/363,026 for use in connection with "Software as a
26 service (SAAS) services featuring software to manage product distribution and logistics; Business
27 technology software consultation services in the fields of product distribution and logistics;"
28 88/363,020 for "Transport by road, air and rail; packaging and storage of goods; delivery of

1 goods; merchandise packaging for others; packaging articles for transportation; warehousing
 2 services, namely, storage, distribution, pick-up, and packing for shipment of documents, packages,
 3 raw materials, and other freight for others; supply chain logistics and reverse logistics services,
 4 namely, storage, transportation and delivery of goods for others by air, rail, ship or trucks;” and
 5 88/363,009 for “Distribution of samples for publicity purposes; Promoting the goods and services
 6 of others by means of distributing advertising on the Internet; Wholesale distributorship services
 7 featuring locally-sourced consumer products; Distributorship services in the field of locally-
 8 sourced consumer products; Transportation logistics services, namely, arranging the transportation
 9 of goods for others; Providing an on-line database for reporting and tracking the storage, pick-up,
 10 transportation, and delivery of goods for business purposes; Advertising and marketing services,
 11 namely, promoting the goods and services of others.”

12 21. Green Thread’s applications to register the FILIGREEN mark were filed on an
 13 intent-to-use basis, and Green Thread has not provided a first-use date in connection with the
 14 applications. On information and belief, Green Thread’s use of the FILIGREEN mark began no
 15 earlier than 2017—approximately 17 years after Filigreen’s own use of its FILIGREEN mark.

16 **Likelihood of Confusion**

17 22. Green Thread is using and has applied to register a trademark identical to that of
 18 Filigreen. The term “filigreen” has no meaning in any language.

19 23. Distribution and related services offered by Green Thread are directly related to the
 20 goods and services of Filigreen. It is likely that Green Thread’s agricultural customers will be
 21 aware of Filigreen, and will associate Green Thread’s mark with Filigreen.

22 24. In fact, Filigreen already has been contacted by its distributors regarding their
 23 concern over consumer confusion in the marketplace creating an association between Filigreen
 24 and Green Thread where none exists.

25 **FIRST CLAIM FOR RELIEF**

26 **(Common Law Trademark Infringement)**

27 25. Filigreen incorporates and realleges paragraphs 1 through 24 of this Complaint.

28 26. Filigreen has valid and protectable prior rights in the FILIGREEN trademark.

27. The Green Thread FILIGREEN goods and services have infringed or will infringe the rights of Filigreen, in violation of 15 U.S.C. § 1114(a).

28. Filigreen is informed and believes, and on that basis alleges, that Green Thread's infringement of Filigreen's FILIGREEN trademark as described herein has been or will be, intentional, willful, and without regard to Filigreen's rights.

29. Filigreen is informed and believes, and on that basis alleges, that Green Thread intends to gain profits by virtue of its infringement of Filigreen's FILIGREEN trademark.

30. Filigreen will suffer irreparable harm from Green Thread's infringement of its trademark insofar as Filigreen's invaluable goodwill will be eroded by Green Thread's continuing infringement. Filigreen has no adequate remedy at law to compensate it for the loss of business reputation, customers, market position, confusion of potential customers and goodwill flowing from Green Thread's infringing activities. Pursuant to 15 U.S.C. § 1116, Filigreen is entitled to an injunction against Green Thread's continuing infringement of Filigreen's FILIGREEN trademark. Unless enjoined, Green Thread will continue its infringing conduct.

31. Because Green Thread's actions will be or have been committed with intent to damage Filigreen and to confuse and deceive the public, Filigreen is entitled to treble its actual damages or Green Thread's profits, whichever is greater, to an award of costs, and, this being an exceptional case, reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a) and 1117(b).

SECOND CLAIM FOR RELIEF

(Unfair Business Practices – California Business and Professions Code § 17200, et seq.)

32. Filigreen incorporates and realleges paragraphs 1 through 31 of this Complaint.

33. The acts of Green Thread described above constitute unfair competition through unlawful, unfair, or fraudulent business practices and/or unfair, deceptive, untrue, or misleading advertising, as defined by California Business & Professions Code § 17200, et seq.

34. Filigreen has valid and protectable prior rights in the FILIGREEN trademark. The FILIGREEN trademark does not serve any function other than to identify Filigreen as the source of its products and services. The FILIGREEN trademark is inherently distinctive, and, through

1 Filigreen' long use, has come to be associated solely with Filigreen as the source of its goods and
2 services.

3 35. Green Thread's use of its infringing FILIGREEN trademark is likely to cause
4 confusion as to the source of Green Thread's products and services and is likely to cause others to
5 be confused or mistaken into believing that there is a relationship between Green Thread and
6 Filigreen or that Green Thread's products are affiliated with or sponsored by Filigreen.

7 36. The above-described acts and practices by Green Thread are likely to mislead or
8 deceive the general public and therefore constitute unfair competition in violation of California
9 Business & Professions Code §§ 17200, et seq.

10 37. The above-described acts constitute trademark infringement under Section 32 of the
11 Lanham Act, 15 U.S.C. § 1114, and are, therefore, unlawful acts in violation of California
12 Business & Professions Code §§ 17200, et seq.

13 38. Green Thread acted willfully and intentionally in choosing its identical, infringing
14 trademark, with full knowledge of Filigreen's prior rights in the distinctive and fanciful
15 FILIGREEN mark, and with an intent to cause confusion or mistake or to deceive customers into
16 believing that there is an affiliation between Green Thread and Filigreen or between Green
17 Thread's products and Filigreen's products.

18 39. The unlawful, unfair, and fraudulent business practices of Green Thread described
19 above present a continuing threat to, and are meant to deceive members of, the public in that
20 Green Thread will promote its products by wrongfully trading on the goodwill of Filigreen's
21 FILIGREEN trademark.

22 40. As a direct and proximate result of these acts, Green Thread will profit from the
23 strength of the Filigreen's FILIGREEN trademark.

24 41. As a direct and proximate result of Green Thread's wrongful conduct, Filigreen
25 will be injured in fact and will lose market share, money, and profits, and such harm will continue
26 unless Green Thread's acts are enjoined by the Court. Filigreen has no adequate remedy at law for
27 Green Thread's violation of Filigreen's rights.

28 42. Green Thread should be required to restore to Filigreen any and all profits earned as

1 a result of their unlawful and fraudulent actions, or to provide Filigreen with any other
2 restitutionary relief as the Court deems appropriate.

3 **THIRD CLAIM FOR RELIEF**

4 **(Unjust Enrichment)**

5 43. Filigreen incorporates and realleges paragraphs 1 through 42 of this Complaint.

6 44. As a result of the conduct alleged herein, Green Thread will be unjustly enriched to
7 Filigreen's detriment. Filigreen seeks a worldwide accounting and disgorgement of any and all ill-
8 gotten gains and profits that result from Green Thread's inequitable activities.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Filigreen prays for relief, as follows:

11 1. An order preliminarily and permanently enjoining Green Thread and its officers,
12 directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in
13 concert with them, and their parents, subsidiaries, divisions, successors and assigns, from directly
14 or indirectly infringing the FILIGREEN trademark and/or any other confusingly similar
15 trademark, from passing off Green Thread's products and services as being associated with and/or
16 sponsored by or affiliated with Filigreen, from committing any other unfair business practices
17 directed toward obtaining for themselves the business and customers of Filigreen, and, from
18 committing any other unfair business practices directed toward devaluing or diminishing the brand
19 or business of Filigreen;

20 2. An order transferring the domain name filigreen.com to Filigreen;

21 3. Actual damages suffered by Filigreen as a result of Green Thread's unlawful
22 conduct, in an amount to be proven at trial, as well as prejudgment interest as authorized by law;

23 4. Reasonable funds for future corrective advertising;

24 5. An accounting of Green Thread's profits pursuant to 15 U.S.C. § 1117;

25 6. A judgment trebling any damages award pursuant to 15 U.S.C. § 1117;

26 7. Punitive damages pursuant to California Civil Code § 3294;

27 8. Restitutionary relief against Green Thread and in favor of Filigreen, including
28 disgorgement of wrongfully obtained profits and any other appropriate relief;

1 9. Costs of suit and reasonable attorneys' fees; and,

2 10. Any other remedy to which Filigreen may be entitled, including all remedies
3 provided for in 15 U.S.C. § 1117, Cal. Bus. & Prof Code §§ 17200, et seq., 17500, et seq., and
4 under any other California law.

5 Dated: September 21, 2020

FARELLA BRAUN + MARTEL LLP

6
7 By:



Nate Garhart

8 Attorneys for Plaintiff

9 FILIGREEN FARM LLC

10
11 **DEMAND FOR JURY TRIAL**

12 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Filigreen hereby demands
13 a trial by jury on all issues raised by the Complaint.
14

15 Dated: September 21, 2020

FARELLA BRAUN + MARTEL LLP

16
17 By:



18 Nate Garhart

19 Attorneys for Plaintiff

20 FILIGREEN FARM LLC